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**Five Questions About Surviving the COVID-19 Crisis with Kurt Murray  
Principal at Assurance, a Marsh & McLennan Agency LLC Company**

**May 14, 2020: Martin L. Borosko, Esq., Staffing Practice Leader of Becker LLC, interviewed fellow Industry Partner Kurt Murray, Principal at Assurance about the hot topics Kurt is consulting with his Staffing clients about during the COVID-19 crisis.**

***Borosko: What are the most impactful actions an Agency can immediately take as a result of the pandemic?***

**Murray:** Every agency is being impacted differently, and it varies greatly based on their vertical and geography. Hospitality staffing agencies have seen their business decimated, while many Medical, IT and Pharma firms are experiencing unprecedented growth and demand.

Generally though, there are steps that every agency should take in order to protect themselves:

- Conduct a full review of all your insurance coverages to determine where you may have coverage for COVID-related losses and more importantly where you do not. Try to fill those gaps as cost effectively as possible, where coverage is available. We are starting to see suits against employers for violations of privacy, failure to provide a safe work environment, failure to supply proper PPE, etc. Insurance coverages for these claims are largely untested at this point.
- Don't be afraid to file claims for 1<sup>st</sup> party losses such as Business Interruption claims. The vast majority of Property policies have Virus exclusions but make the insurance carriers put their coverage positions in writing. Those coverage positions might be successfully challenged in the future and you don't want to jeopardize potential coverage for failure to comply with notification provisions.
- Review all contracts to determine if the language in the contract requires the agency to do certain things that are no longer feasible, such as in-person interviews and background checks. If a contract requires things of this nature, the agency should immediately seek a waiver in order to avoid breaching the contractual terms, as in most cases, these breaches are not covered by insurance.

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- Pay close attention to your HR policies and make immediate modifications as necessary to comply with the new laws. The new work rules allow or sometimes require employers to do certain things that we never imagined, such as asking detailed medical questions, daily health screening, etc.
- Communicate effectively and compassionately with your employees. They are your capital and it's important to protect and show you appreciate them. This goodwill can go a long way when an employee is considering whether to take action against the employer at some point.
- Surround yourself with trusted advisors who are knowledgeable about your agency and the staffing industry. We've recently talked to numerous owners who have received little or incorrect advice from those who they should be relying on, and in some cases, it could cost them their businesses.

***Borosko:*** *Several states have enacted legislation to address the Workers' Compensation compensability of COVID-19 claims, and more legislation is pending in numerous other states. What does the state landscape look like and what is the potential financial impact?*

**Murray:** Workers' Compensation coverage is dictated at the state level, so each state's position on compensability must be closely monitored, as the status seems to change daily. Prior to the pandemic, communicable diseases were generally not considered compensable.

Some states have mandated that any essential employee who contracts COVID-19 is presumed to have done so in the workplace. It is very important to understand the state-specific legislation and how COVID claims would impact the agency's Workers' Compensation program.

It is also important to note that for those agencies that utilize a loss sensitive workers' compensation program, such as a deductible program, retrospective plan, captive, etc., the losses will most likely be deemed compensable under the Employers' Liability coverage portion of the policy, and those losses are applied towards your retained loss exposure on a 'per-employee' basis, so each infection will be treated as an individual occurrence.

Due to the nature of the virus, it should be expected that multiple infections will arise within a customer's facility so the costs could be significant.

**Borosko:** *What can agencies do to protect themselves from COVID-related Workers' Compensation claims?*

**Murray:** It is vitally important to maintain detailed documentation about your customers' facilities and your known and suspected infections. The more documentation you have, the better prepared you will be to successfully defend these claims.

Documentation should include:

- Customers' adherence to OSHA and CDC safe workplace guidelines
- Your OSHA required employee safety orientation and your customers' on-going training
- Detailed information about PPE provided to your employees and your customers' own employees
- Dates of known infections, contact tracing, required self-quarantines
- Customer site closures for regular and periodic disinfecting or disinfecting after known infections

It's also imperative to conduct thorough COVID-19 screening on prospective new customers.

**Borosko:** *How is COVID-19 expected to impact the insurance marketplace?*

**Murray:** Certain industries will see a higher frequency of claims, specifically essential businesses. This is not limited to allegations for COVID-19 work comp claims, but all work comp injury claims, as well as third party liability claims. If certain industries are not operating (while essential businesses are), their loss frequency is naturally going to be higher. Essential businesses may also become targets for liability lawsuits (food contamination, improper cleaning, medical malpractice, etc.). It's imperative to stay up to date on CDC, OSHA, and EEOC guidelines to protect your company from third party claims.

Existing and new claims that occur during the pandemic (work comp & liability) will likely incur at a greater cost than they previously would have been expected to. With lockdown measures in place, the adjustment of current claims has come to a standstill in some cases. Litigation/mediation is not moving forward, non-emergency medical procedures are being delayed, and IME's are being placed on hold, etc. so claim costs are expected to increase. The longer claims remain open, the higher the ultimate costs are going to be.

As the economy takes a hit, so do insurance carriers' investment portfolios. As they become less profitable from investments and underwriting alike, this will contribute to decreased capacity and increased premiums.

**Borosko:** *Cash is king for staffing agencies, so what cost saving ideas can you suggest for agency owners?*

**Murray:** We'd recommend several strategies. Some are relatively easy to initiate while others are more difficult:

- In most states, agencies will be allowed to segregate wages paid to furloughed employees to be excluded from the Workers Compensation wage base, so document those wages for WC audit purposes
- If you have a loss sensitive workers' compensation program that is collateralized with cash, ask the insurance carrier to allow you to replace some or all of the cash with a letter of credit, or better yet, a bond
- Ask for mid-year reductions to your exposures, thus reducing premiums, in order to ease cash flow
- Request premium deferrals. Most insurance carriers are granting these immediately upon request
- If you pay fixed monthly workers' compensation premiums to your insurance carriers, ask them to immediately migrate you to a variable pay-as-you-go program so your premiums fluctuate with your wages

**About the Professionals:**



**About Kurt Murray:** Kurt Murray is a Principal at Assurance, a Top 50 U.S. insurance brokerage. Kurt focuses on mid-sized companies in the staffing industry. His primary responsibility is to provide cost-effective solutions and develop insurance programs that are individualized to a company's specific needs.

Kurt graduated from Northern Illinois University with a Bachelor of Science degree in Finance. He has presented at numerous staffing industry events and conferences, including TempNet, New Jersey Staffing Alliance and American Staffing Association



**About Martin L. Borosko:** Martin L. Borosko has been the Managing Member of the firm since 2006. Under his leadership, the firm has grown into one of the premier boutique firms with offices in New York, New Jersey, California and Philadelphia.

Martin leads the Staffing team within the firm dedicated to studying the best legal practices within the staffing and healthcare industries. His philosophy is to direct clients toward legal strategies that facilitate growth and increase enterprise value in the long term. He often works as part of a team with leading investment bankers, accountants and risk managers to implement comprehensive growth strategies for clients. Martin is a frequent contributor to legal and business publications and lectures across the country on emerging issues impacting the Staffing Industry.

**About Becker LLC:** Becker LLC is a premiere mid-market firm recognized as a leader in the staffing industry. With offices in New York, New Jersey, Philadelphia and California, the firm provides forward thinking, mission-critical advice to staffing industry entrepreneurs and management on high stakes, complex legal matters as well as day-to-day matters and long-term plans. The firm are proud to be members of the following Staffing Associations: SIA, ASA, ASG, TempNet, CSP, MSA, NJSA, NYSA and serves as general counsel to the Mid Atlantic Staffing Association.